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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

NASRIN MAHMOUDIANI, as Personal  
Representative, etc.,

Plaintiff and Respondent,

v.

BARTLETT CARE CENTER, LLC et al.,

Defendants and Appellants.

G055851

(Super. Ct. No. 30-2017-00950363)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Ronald L. Bauer, Judge. Affirmed.

Lewis Brisbois Bisgaard & Smith, Kathleen M. Walker, Lann G. McIntyre, and Mason T. Smith for Defendants and Appellants.

Valentine Law Group, Kimberly A. Valentine, Jennifer L. Turner, and Joseph F. Fighera for Plaintiff and Respondent.

Bartlett Care Center, LLC (Bartlett), dba French Park Care Center (French Park) appeals from the trial court's order denying its motion to compel arbitration. Bartlett argues the court erred by denying the motion because there was a valid, enforceable arbitration agreement. We disagree and affirm the order.

### FACTS<sup>1</sup>

French Park is a licensed 24-hour skilled nursing facility operated and owned by co-defendants Sun Mar Management Services and Sun-Mar Health Care, Inc. Fatemeh Janbazi was admitted to French Park on July 23, 2015, and remained there, except for three hospitalizations, until her death.

At admission, she had a stroke and skull surgery, and was paralyzed on her right side. She was dependent on her tracheostomy tube and ventilator to breathe and her gastronomy tube for nutrition, hydration, and medication. She could not follow commands and was totally dependent on caregivers for daily living activities. Her medical records show that after her second hospitalization and return to French Park, Janbazi repeatedly tried to pull out her tracheostomy tube.

In August 2016, over one year after Janbazi was admitted to French Park, Janbazi's husband, Sohrab Mahmoudiani (Sohrab), signed and dated a two-page "Resident-Facility Arbitration Agreement" (Arbitration Agreement). He also marked his initials on the first page, on both lines where a person would place his/her initials.

On October 21, 2016, Janbazi dislodged her tracheostomy tube. The respiratory supervisor reinserted the tracheostomy tube, allegedly two sizes too small, but Janbazi had no pulse, no respirations, and no blood pressure; staff called the paramedics. Janbazi died that afternoon.

Nasrin Mahmoudiani (Nasrin), Janzabi's daughter and the personal representative of her estate, filed a complaint alleging the following causes of action:

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We provide a brief recitation of the facts as alleged in the complaint.

negligence/willful misconduct; elder abuse and neglect; violation of Patients' Bill of Rights; and wrongful death. The theory of the complaint was French Park's lack of care caused Janzabi's death because French Park knew she was dependent on her tracheostomy and gastronomy tubes and she had a history of pulling them, but it did not create a care plan, i.e., restraints, to prevent her from dislodging the tubes.

Bartlett filed a motion to compel arbitration. Nasrin filed opposition. Bartlett filed a reply.

At a hearing on the motion, the trial court began by asking who signed the Arbitration Agreement because Bartlett's motion to compel arbitration indicated they both executed the Arbitration Agreement. After Bartlett's counsel acknowledged the mistake in his moving papers, the court denied the motion to compel arbitration because the Arbitration Agreement was "remarkably deficient on its face." The court denied the motion first because the Arbitration Agreement does not include who the parties are; the lines were left blank. The court also denied the motion because "in terms of the authority, in terms of the agency, . . . and in terms of identification who these people are, it's all a muddle."

## DISCUSSION

"When a trial court's order is based on a question of law, we review the denial de novo. [Citation.]" (*Performance Team Freight Systems, Inc. v. Aleman* (2015) 241 Cal.App.4th 1233, 1239.) A party seeking to prove an arbitration agreement was formed must establish the essential elements of a contract. (*Kinney v. United HealthCare Services, Inc.* (1999) 70 Cal.App.4th 1322, 1327-1328 [existence of valid arbitration agreement determined by state law concerning formation, enforceability, and revocation of contracts generally]; *Banner Entertainment, Inc. v. Superior Court* (1998) 62 Cal.App.4th 348, 361 (*Banner*) [petitioner's burden to establish valid arbitration agreement exists].) Civil Code section 1550 provides the following four essential

elements of a contract: (1) parties capable of contracting, (2) the parties' consent, (3) a lawful object, and (4) adequate consideration. (Civ. Code, § 1550.)

Here, we are concerned only with the first element. "It is a basic rule of contract law that '[i]t is essential to the validity of a contract, not only that the parties should exist, but that it should be possible to identify them.' (Civ. Code, § 1558.)" (*Westlye v. Look Sports, Inc.* (1993) 17 Cal.App.4th 1715, 1728.)

In this case, the Arbitration Agreement did not contain an essential element of the contract—the identity of the parties. The Arbitration Agreement included a blank line where one would write/type the resident's name and a blank line where one would write/type the facility's name. Both are blank. The Arbitration Agreement included two signatures, Sohrab's and Mariana Godinez's, who was an admissions assistant at French Park. But the signatures were insufficient to establish an enforceable agreement without identifying the parties to the agreement. (Civ. Code, § 1558.) The Arbitration Agreement did not demonstrate each element of the contract, and it was not an enforceable contract.

Without citing to any authority, Bartlett claims "Formal identification of the parties is not required for an arbitration agreement to be enforceable." Civil Code section 1558 says otherwise.

Bartlett relies on *Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, 209 (*Bustamante*), to support its claim "[a] contract will be recognized if it is sufficiently definite for the court to ascertain the parties' obligations . . . ." *Bustamante* concerned the second element, the parties' consent (*id.* at p. 208), and not the issue here, the first element, the identification of the parties. Bartlett also relies on Civil Code section 1647, circumstances of the contract, but that too concerns the meaning of a contract, which is not at issue here.

Finally, Bartlett asserts the parties are easily identified from context and surrounding circumstances. Bartlett asserts it is undisputed Sohrab executed the

Arbitration Agreement and the document “constantly references both parties—‘Resident and Facility, as parties to this agreement.’” But Sohrab was not the resident. A signature may not be necessary (*Serafin v. Balco Properties Ltd., LLC* (2015) 235 Cal.App.4th 165, 176), but the existence of an agreement is (*Banner, supra*, 62 Cal.App.4th at p. 361 [existence of evidence of agreement dispositive]). As to Bartlett’s claim in its reply brief “[t]he identity of the parties . . . could not be more clear,” those parties are not included in the Arbitration Agreement, and we will not insert them and do what the parties themselves should have done. Because we conclude the Arbitration Agreement fails for lack of identifying the parties, we need not address the agency issue. The trial court properly denied Bartlett’s motion to compel arbitration.

#### DISPOSITION

The order is affirmed. Respondent is awarded her costs on appeal.

O’LEARY, P. J.

WE CONCUR:

THOMPSON, J.

GOETHALS, J.